(1) Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE SEREDY, IRENE SEREDY,
ANDREW SEREDY, CHRISTINA SEREDY,

Petitioner

v.

THERESA RACANSKY

Respondent

On Petition for A Writ Of Certiorari to the
Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

George Seredy, pro se
Irene Seredy, pro se
Andrew Seredy, pro se
Christina Seredy, pro se

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23pp

QUESTIONS PRESENTED FOR REVIEW

Article V, Section 3(b) of the Florida Constitution limits the review jurisdiction of the Florida Supreme Court to decisions whose opinion expressly and directly conflicts with earlier decisions. If the opinion does not state a law, the Florida Supreme Court cannot look into the records to determine whether a conflict or a denial of constitutional rights, nevertheless, still exists.

Thus, the questions are:

1) Whether Article V, Section 3(b) of the Florida Constitution is irreconcilable with the Equal Protection and Due Process guarantees in the Fourteenth Amendment of the Constitution of the United States?

2) Did the Florida Supreme Court err withholding, on the basis of Article V. Section 3(b) of the Florida Constitution, review of questions of due process, and not looking into the records to determine for itself whether the lower courts denied Petitioner's constitutional rights?

LIST OF PARTIES TO THE PROCEEDING

Petitioners are Andrew Seredy, Christina Seredy, Irene Seredy, and George Seredy.

Private respondent is Theresa Racansky.

State respondent is The Attorney General for the State of Florida.

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Seredy v. Racansky, SC97082, S. Ct., Fla, Apr 13, 2000

JURISDICTION

On 13th April, 2000, the Supreme Court of Florida denied review for case number SC97082.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257.

> *Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where... ...any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.*

28 U.S.C. 2403(B) MAY APPLY

Pursuant to U.S. Sup. Ct. Rule 29.4(c), notifications have been made in accordance with 28 U.S.C. § 2403(b) to the Attorney General of Florida. This Honorable Court has not yet certified to the Attorney General of Florida that the constitutionality of a Florida statute has been brought into question.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This petition concerns the Due Process and Equal Protection clause of the Fourteenth Amendment and its supremacy over State laws. United States Constitution, Fourteenth Amend., Section 1

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article V, Section 3(b) of the Florida Constitution,

The supreme court:

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

Seredy, Petitioner, sued the estate of Ted Molnar for moneys loaned. In turn, Respondent, the personal representative of the estate, counter-sued Petitioner for other property, and claimed homestead protection against creditors.

Petitioners loaned moneys to Decedents. While the loan agreement was with Klara Molnar, a $75,000 check was indorsed and cashed by Ted Molnar, Klara's husband. Petitioner testified under oath, and the testimony stands uncontroverted, that:

a) Klara Molnar issued a promissory note to Seredy for $100,000 as a record of a loan from Seredy to Molnar; (Tr. at 47-52)

b) Ted Molnar, Klara's husband, received $75,000 from Seredy as part of the total loan, although, Ted did not have a loan agreement with Seredy (Tr. at 82 – 83, 128 - 132).

Petitioners also presented the promissory note and the copy of the indorsed check as proof of loan. These were properly admitted as evidence.

Respondent admitted to having no personal knowledge of any of the facts she contested in this matter. (Racansky Dep. at 18, 23, 45). Furthermore, respondent did not show up for the trial.

None of Respondent's sources testified to support Respondent's claims.

Respondent could not produce any documentary evidence to show satisfaction of the loan. Nor could she prove the alleged US residency for homestead protection.

B. PROCEEDINGS BEFORE THE TRIAL COURT

The case was tried under equity jurisdiction in the 17th Circuit Court, Broward, Florida, on March 25-26, 1998.

Judgment was rendered six months after the trial, upon Petitioner's motion, on September 11th, 1998.

The 17th Circuit Court for Broward County, Florida, denied Petitioner's right to recover his money. It ruled that the "*testimony eluded* (hic) *to an attempt of the parties to avoid certain tax consequences.*"

The trial court did not specify how did it ascertain, 5 years post mortem, Decedents' (one of the parties) attempt to avoid taxes; the

trial court did not specify which statutes were broken, and it has never allowed any party to defend against the charge.

Furthermore, the ruling gives no consideration to Florida's "quasi contract" rule. This rule requires that monies must be returned to rightful owner. Moss v. Condict, 16 So.2d, 921..

C. PROCEEDINGS BEFORE THE 4TH DIST. CT. APP.

The 4th District Court of Appeal, Florida, upon Petitioner's appeal, affirmed the Trial Court's ruling on July 14th, 1999, then after a rehearing affirmed it on September 17, 1999.

The decision of 4th District Court of Appeal, Florida, made no reference to the statutes and precedents it conflicted with.

D. PROCEEDINGS BEFORE THE S. CT., FLA

Nevertheless, Petitioner applied to the Supreme Court of Florida for discretionary review on the basis that the lower court's ruling conflicted with Florida law, and as such, was lacking of due process and essential requirements of law.

The Supreme Court of Florida denied certiorari, citing that in order to determine conflict, it would have had to examine the records, but that Article V, Section 3(b) of the Florida Constitution did not allow it to do so.

REASONS FOR GRANTING THE PETITION

A. THE FEDERAL QUESTION

The decision of the Florida Supreme Court involves an important federal question – Fourteenth Amendment rights – and it conflicts

with earlier decisions of the Supreme Court of the United States (infra, Time, Inc. v Pape, 401 US 279, and Mortensen v United States, 322 US 369).

Furthermore, the Florida Supreme Court's decision implies that federal constitutional guarantees cannot overcome inconsistent state rules.

Petitioner's jurisdictional brief to the Florida Supreme Court specifically stated that the questions for review involved "due process" of the law.

The Supreme Court of the United States previously held that the federal question could be in general form rather than verbatim: "Our jurisdiction does not depend on citation to book and verse." Eddings v. Oklahoma, 455 US 104, 113-14 n. 9 (1982)

Accordingly, Petitioner's reference to "due process" had adequately alerted the Florida Supreme Court to the presence of a federal question. However, the Florida Supreme Court denied certiorari – not because it did not find conflict; not because it did not find a violation of constitutional rights; but it denied certiorari because Florida Constitution did not allow it to examine the records.

For reasons that follow, this is not an adequate and independent state ground upon which the decision of the State Court could stand, because:

a) a consideration on constitutional rights would have compelled the Florida Supreme Court to determine for itself whether conflict existed. (Time, Inc. v Pape, 401 US 279). Now, because federal considerations would have resulted in a different ruling, the state ground is inadequate (Chicago B.& Q.R. Co. v Illinois, 200 US 561);

b) Requirements of Article V, Section 3(b) of the Florida Constitution are inconsistent with the guarantees of the Fourteenth Amendment: it will let standing a decision which

violates constitutional rights rather than allow the state court to examine the records. Now, because the ruling is inconsistent with federal law, the state ground is inadequate (Jankovich v Indiana Toll Road Com., 379 US 487).

Therefore, because the adequacy and independence of any possible state law ground is not clear from the face of the ruling, it follows "*that the State Court decided the way it did because it believed that federal law required it to do so*" (Michigan v Long, 463 US 1032).

B. THE RULING CONFLICTS WITH DECISIONS OF THE SUPREME COURT OF THE UNITED STATES

The Supreme Court of the United States has consistently ruled that it looks at court judgments, not opinions (Black v Cutter Laboratories, 351 US 292); that it will not accept ambiguous, vaguely worded decisions (Michigan v Long, 463 US 1032); that it will not equate a recital of facts in the opinion with findings of facts (Beck v Ohio, 379 US 89); and, that it will look into the records to determine the basis for the lower court's ruling (Mortensen v United States, 322 US 369).

The Supreme Court of the United States has also ruled that:

> "*In cases in which there is a claim of denial of rights under the Federal Constitution, the United States Supreme Court is not bound by the conclusions of lower courts, but will examine the evidentiary basis on which those conclusions are found.*" Time, Inc. v Pape, 401 US 279.

On the other hand, the Florida Supreme Court decided, in complete indifference to Petitioner's claim of due process violation, that "*...portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is*

ordered that the Petition for Review is denied." (Appendix D – In the Supreme Court of Florida)

C. A DECISION IN ACCORDANCE WITH ARTICLE V, SECTION 3(B) OF THE FLORIDA CONSTITUTION NECESSARILY DENIES RIGHTS GUARANTEED IN THE CONSTITITION OF THE UNITED STATES

If the Florida Supreme Court does look into the records to determine questions of constitutional violations, it will have rendered a ruling in agreement with federal precedents; however, it will have conflicted with the Florida Constitution and Florida case law. But if it denies review in accordance with Article V, Section 3(b) of the Florida Constitution, then it will, as it does, conflict with the decisions of the Supreme Court of the United States.

D. FLORIDA COURT DECISIONS WHICH DENY CONSTITUTIONAL RIGHTS CAN ACCUMULATE AND REMAIN STANDING

Since the Florida Supreme Court cannot examine the records, it is as likely as not that a ruling that denies constitutional rights will remain standing. Simply by the passage of time, conflicting and unconstitutional decisions will surely accumulate in Florida.

Therefore, guidance from the Supreme Court of the United States is needed.

E. IS THE LOWER COURT THE RIGHT FORUM TO DETERMINE WITH FINALITY WHETHER ITS DECISION DENIES CONSTITUTIONAL RIGHTS?

Article V, Section 3(B) of the Florida Constitution trusts lower courts to determine which of their decisions will the Florida Supreme Court have jurisdiction to review.

On one hand, Florida law prohibits conflicting decisions (Gilliam v. Stewart, 291 So.2d 593). On the other hand, Article V, Section 3(b) of the Florida Constitution does not allow the Florida Supreme Court to examine the records for possible conflicts or rights violations. The lower court is free to make or omit an express and direct reference in its decision to the laws or rights it conflicts with.

The question is, then: is the lower court the right forum to determine with finality whether its decision violates constitutional rights?

If the purpose in Article V, Section 3(B) of the Florida Constitution is to streamline appellate review, does it indeed support the Florida judicial process? Does it free Florida courts from unnecessary appeals or does it simply close the appellate system off?

CONCLUSIONS

Petitioners respectfully submit that certiorary should be granted.

Respectfully,

George Seredy
Irene Seredy
Andrew Seredy
Christina Seredy

APPENDICES

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA
PROBATE DIVISION
JUDGE GROSSMAN
CASE NO:94-7685
CASE NO: 95-02513
CASE NO: 95-2899

"A TRUE COPY - ROBERT E. LOCKWOOD"

IN RE: Estate Of Ted Molnar,

Deceased/
IRENE SEREDY and GEORGE SEREDY

Plaintiffs
v.
THERESA RACANSKY, as Personal Representative of The Estate Of Ted Molnar,

Defendants/
IN RE:
Estate Of Klara Molnar,

Deceased/
THERESA RACANSKY, as Personal Representative of The Estate Of Ted Molnar,

Petitioner/CounterRespondent

v.
IRENE GABRIELLA SEREDY, CHRISTINA SEREDY, ANDREW JAMES SEREDY
and GEORGE SEREDY, as Personal Representative of the Estate of Klara Molnar

Respondent/Counter-Petitioner/

[Argued March 23-24, 1998,
Decided September 11, 1998]

ORDER

THIS CAUSE having come before this Court on Theresa Racansky's Petition to Determine Homestead and on a Claim filed by George Seredy and the Court having reviewed the file, having heard the argument of counsel, and being otherwise fully advised in the premises finds that it shall be:

ORDERED AND ADJUDGED that the quitclaim deed executed on January 9, 1991, nine months prior to the loan secured by the Margate property, is deemed a valid conveyance of property located at 2259 N.W. 75th Avenue, Margate, Florida. It is further,

ORDERED AND ADJUDGED that this Court shall not uphold the validity of the agreement of loan dated September 12, 1991,. Said agreement states an amount of $100,000 while the amount actually loaned was only $75,000. The testimony elicited at trial concerning this discrepancy alluded to an attempt of the parties to avoid certain tax consequences. This Court will not validate any agreement whereby any portion is for illegal purpose. It is further,

ORDERED AND ADJUDGED that the Petition to Determine Homestead is granted as to 25% of the property reflecting Klara Molnar's 25% interest per the quitclaim deed. Klara Molnar's 25% homestead interest shall descend to the estate of Ted Molnar. It is further,

ORDERED AND ADJUDGED that the claim for funeral expenses shall be denied as the plaintiffs failed to prove said claim.

DONE AND ORDERED in Chambers in Fort Lauderdale, Broward County, Florida, this 11th day of September, 1998.

s/Judge Mal Grossman

Copies to:
Mr. Kenneth R. Mikos, Esq., 2780 East Oakland Park Blvd., Fort Lauderdale, FL 33306
Mrs. Irene Seredy, 7431 Northwest 23rd Street, Margate, FL 33063
Mr George Seredy, 7431 Northwest 23rd Street, Margate, FL 33063

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT
JULY TERM 1999

ANDREW SEREDY, CHRISTINA SEREDY, GEORGE SEREDY, and IRENE SEREDY,
Appellants,
v.
THERESA RACANSKY, as Personal Rep[resentative of the ESTATE OF TED MOLNAR,
Appellee.

CASE NO. 98-3510

Opinion filed July 14, 1999

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Mel Grossman, Judge; L.T. Case Nos. 94-7685, 95-2513 & 95-2899.

Irene Seredy and George Seredy, Margate, pro se.

Kenneth R. Mikos and Doglas F. Hoffman of the Law Offices of Kenneth R. Mikos, P.A., Fort Lauderdale, for appellee.

WARNER, C.J.

The appellants, George and Irene Seredy, sued the appellee estate for monies that were allegedly due to them from an unpaid loan and for payment of funeral expenses of the deceased, Ted Molnar, as well as his wife, Klara, who predeceased Ted. After hearing the testimony of appellants, the trial court denied both of their claims.

The findings of the trial court, as the trier of fact, come to this court clothed with a presumption of correctness, and where is substantial competent evidence to sustain the

> actions of the trial court, the appellate court cannot substitute its opinion on the evidence but rather must indulge every fact and inference in support of the trial court's judgment, which is equivalent of a jury verdict.

Smiley v. Greyhound Lines, Inc., 704 So.2d 204, 205 (Fla. 5th DCA 1998)

While appellant George Seredy claimed he was entitled to $15,000 from Ted Molnar's estate for expenses incurred in Klara Molnar's funeral, the record contains a statement of claim by George Seredy, as personal representative of Klara Molnar's estate, that he also sought reimbursement of funeral expenses in the amount of $7,000 from her estate, not Ted's. Although, appellant testified that he also paid for Ted Molnar's funeral, no tesimony or evidence established how much these expenses were, or whether he filed a statement of claim in Ted's estate for such expenses. On such evidence, the trial court could conclude that there was a failure of proof.

We also affirm as to the claim on the loan, which the evidence showed was not executed by Ted Molnar. In addition, there was evidence presented that the loan had been satisfied. On disputed issues of fact, the appellate court defers to the superior vantage point of the trial court in sifting through the evidence and assessing the credibility of the witnesses before it. *See id.*

Affirmed.

STONE and STEVENSON, JJ., concur.

NOT FINAL UNTIL THE DISPOSITION OF ANY TIMELY FILED MOTION FOR REHEARING.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT JULY TERM 1999

ANDREW SEREDY, CHRISTINA SEREDY, GEORGE SEREDY, and IRENE SEREDY,

Appellants,

v.

THERESA RACANSKY, as Personal Rep[resentative of the ESTATE OF TED MOLNAR,

Appellee.

CASE NO. 98-3510

Opinion filed September 17, 1999

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Mel Grossman, Judge; L.T. Case Nos. 94-7685, 95-2513 & 95-2899.

Irene Seredy and George Seredy, Margate, pro se.

Kenneth R. Mikos and Doglas F. Hoffman of the Law Offices of Kenneth R. Mikos, P.A., Fort Lauderdale, for appellee.

ON MOTION FOR REHEARING

WARNER, C.J.

We withdraw our previously issued opinion and substitute the following in its place.

The appellants, George and Irene Seredy, sued the appellee estate for monies that were allegedly due to them from an unpaid loan and for payment of funeral expenses of the deceased, Ted Molnar, as well as his wife, Klara, who predeceased Ted. After hearing the testimony of appellants, the trial court denied both of their claims.

> The findings of the trial court, as the trier of fact, come to this court clothed with a presumption of correctness, and where is substantial competent evidence to sustain the actions of the trial court, the appellate court cannot substitute its opinion on the evidence but rather must indulge every fact and inference in support of the trial court's judgment, which is equivalent of a jury verdict.

Smiley v. Greyhound Lines, Inc., 704 So.2d 204, 205 (Fla. 5th DCA 1998)

While appellant George Seredy claimed he was entitled to $15,000 from Ted Molnar's estate for expenses incurred in Klara Molnar's funeral, the record contains a statement of claim by George Seredy, as personal representative of Klara Molnar's estate, that he also sought reimbursement of funeral expenses in the amount of $7,000 from her estate, not Ted's. Although, appellant testified that he also paid for Ted Molnar's funeral, no tesimony or evidence established how much these expenses were, or whether he filed a statement of claim in Ted's estate for such expenses. On such evidence, the trial court could conclude that there was a failure of proof.

We also affirm as to the claim on the loan, which the evidence showed was not executed by Ted Molnar. In addition, there was evidence presented that the loan had been satisfied and that it was being used to avoid certain tax consequences. The trial court refused to recognize it as valid. On this record, there is no error presented.

Affirmed.

STONE and STEVENSON, JJ., concur.

NOT FINAL UNTIL THE DISPOSITION OF ANY TIMELY FILED MOTION FOR REHEARING.

SUPREME COURT OF FLORIDA
THURSDAY, APRIL 13, 2000
CASE NO.: SC97082
LOWER TRIBUNAL NO.: 98-3510

IRENE SEREDY, et al. vs. THERESA RACANSKY, etc.
Petitioner(s) Respondent(s)

[Decided April 13, 2000]

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

Petitioners' Motion to Strike Respondent's Second Amended Jurisdictional Brief is hereby denied.

SHAW, WELLS, ANSTEAD, PARIENTE and QUINCE, JJ., concur.

A True Copy Seal Supreme Court of Florida
Test:
s/ Debbie Causseaux
Acting Clerk, Supreme Court

Bh
Served:
GEORGE SEREDY
ANDREW J. SEREDY
CHRISTINA A. SEREDY
IRENE SEREDY
KENNETH MIKOS
DOUGLAS FLYNN HOFFMAN
HON. CAROL LEE ORTMAN, ACTING CLERK
HON. MEL GROSSMAN, JUDGE
HON. MARILYN BEUTTENMULLER, CLERK